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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 937

SWITCHMEN'S UNION OF NORTH AMERICA, ET AL.,
PETITIONERS
v.
NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON AND HARRY H. SCHWARTZ, AND BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR THE RESPONDENTS NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON AND HARRY H. SCHWARTZ

OPINIONS BELOW

The district court rendered no opinion; its findings of fact and conclusion of law are set forth at R. 86–92. The opinions of the Court of Appeals for the District of Columbia (R. 180–201) are not yet reported.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia was entered on February 15, 1943 (R. 202). The petition for certiorari was filed on April 16, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended.

QUESTION PRESENTED

Whether under the Railway Labor Act all the employees of a carrier engaged in the same occupation must be treated as members of a single craft or class for purposes of collective bargaining, or whether they can or must be broken up into separate geographical units in accordance with their prior agreements with the carrier.

STATUTE INVOLVED

The statute involved is the Railway Labor Act, as amended in 1934, 48 Stat. 1185, 45 U. S. C., Section 151, *et seq.* The pertinent provisions of the Act are printed as an appendix to the petition.

STATEMENT

The New York Central Railroad Company was created through a consolidation in 1914 of the New York Central and Hudson River Railroad and the Lake Shore and Michigan Southern Railway, operating lines from New York City to Chicago. The portion east of Buffalo has since been known as New York Central Lines—East, and

the portion west of Buffalo as New York Central Lines—West. The New York Central Railroad Company also has leased lines previously operated by other railroad companies (most of which are its subsidiaries), and operates them. The lines so operated are the Boston and Albany, the Cleveland, Cincinnati, Chicago, and St. Louis (Big Four), the Michigan Central, and the Toledo and Ohio Central (R. 38–39, 87–88).

On July 2, 1940, the Brotherhood of Railroad Trainmen (hereinafter referred to as B. R. T.) invoked the services of the National Mediation Board to investigate a representation dispute among the yardmen of the New York Central Railroad Company (R. 31–32, 87). With its application, B. R. T. presented to the Board signed authorizations from 4,749 out of approximately 6,087 yardmen then employed by the Company (R. 40–41, 91, 154–155). At that time the Switchmen's Union represented yardmen in all yards on the Michigan Central Lines west of the Detroit River,[1] and in all but nine yards of the New York Central Lines—West (R. 90, 110). The B. R. T. represented the yardmen on the remainder of the lines operated by the New York Central Railroad Company (*ibid.*).

The Brotherhood claimed that all the yardmen on the New York Central constituted a single craft or class within the meaning of the Act, and

[1] The portion of the lines east of the Detroit River is in Canada.

that since a majority of this craft or class desired to be represented by it, it should be certified as the representative (R. 33, 91). The Switchmen's Union, on the other hand, insisted that it was the representative of the yardmen on the Michigan Central and portions of Lines—West, that these properties constituted separate carriers, and that the yardmen on these properties formed separate crafts or classes, not part of a larger craft covering the entire railroad (R. 34, 35, 91).

The Board investigated, and after finding that the parties were unable to agree, concluded that a dispute existed and set the matter for hearing in order to determine the basis upon which to conduct an election among the employees involved (R. 32–33, 87, 95). Evidence was taken and briefs filed. The Board found that the Michigan Central and Lines—West were not separate carriers, but were part of the properties operated by the New York Central Company as a single carrier. The Board concluded "as a matter of law that the Railway Labor Act vests the Board with no discretion to split a single carrier * * * for the purpose of determining who shall be eligible to vote for a representative of a craft or class of employees * * *" (R. 53). Accordingly, the Board ordered an election to be held among all the yardmen employed by the New York Central Railroad Company (R. 53–54). Of 7,187 employees eligible to vote, 4,112 voted for the B. R. T. and 941 for the Switchmen's Union (R. 56).

The Board thereupon, on April 24, 1942, certified the B. R. T. as the representative of the craft or class of yardmen employed by the New York Central Railroad Company (R. 54–57). The Switchmen's Union and some of its members, petitioners herein, are suing to have the Board's certification set aside and to enjoin the Board from combining the yardmen employed on New York Central Lines—West and the Michigan Central with other yardmen employed by the New York Central Railroad as a single craft or class.

The district court and the Court of Appeals upheld the Board's determination. Mr. Justice Rutledge dissented from the decision of the latter court. Although he rejected petitioners' contentions, he was of the view that the Board had discretion to determine whether the craft or class bargaining unit was carrier-wide in the particular case, and that there was no rule of law justifying the Board's refusal to exercise its discretion here.

DISCUSSION

Petitioners seem to have abandoned their contention that there was no substantial evidence in the record to support the Board's finding that all the divisions of the New York Central were operated as a single railroad.[2] That leaves as the

[2] The district court held this finding to be "supported both by substantial evidence and the weight of the evidence" (R. 92). The Court of Appeals held it to be "a very reasonable conclusion" (R. 187). Mr. Justice Rutledge concurred on this point (R. 194).

issue to be determined whether the Act *requires* that a craft or class be carrier-wide. We agree with petitioners that this issue is important.[3]

The majority of the court below accepted the Board's contention that Congress intended that a carrier treat with only one representative from each craft or class of its employees, and that this meant that there was to be only one representative for all of the employees of the carrier performing the same type of work. The committee reports and congressional debates are silent on this precise point, but both Coordinator of Transportation Eastman, who explained the bill to the congressional committees, and the representatives of the carriers who opposed the bill in committee concurred in their understanding that the words "craft or class" had the meaning which the Board has attributed to them.[4]

Mr. Justice Rutledge was of the opinion that the Act should be construed so as to permit the Board to exercise judgment and discretion in determining whether in a particular case the craft or class unit should be carrier-wide or limited to a subdivision of a carrier. This, however, does not appear to be petitioner's position.

To the extent that petitioners' argument is that all New York Central yardmen are not "involved

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[3] We do not agree that the decision below is in conflict with the cases cited on pp. 8, 11–16 of the petition. None of those decisions involved the present problem. See p. 8, *infra*.

[4] The pertinent excerpts from the testimony before the committees are printed in the opinion below (R. 191–193).

in the dispute" within the meaning of Section 2, Ninth (Pet. 6–7, 18–19), it begs the question. No one doubts, of course, that the Board's authority extends only to the employees "involved" in a dispute. But the Act provides (Sections 2, Fourth, and Ninth) that representatives are to be chosen by the majority of a craft or class, and obviously all the members of such a bargaining unit are involved in a dispute as to its representation. This is true even if separate portions of the same craft each unanimously favor a different representative.[5] Accordingly, if all the yardmen employed by the New York Central Railroad constitute a single craft or class, it is immaterial that a dispute may not exist among employees of the separate divisions. Petitioners' argument that the men on some of the divisions are not "involved" assumes that each division constitutes a separate bargaining unit, and plainly can have no foundation otherwise. Whether or not that is so is precisely the issue to be decided.

If petitioners' contention is that the Board is bound to follow the grouping established in contracts existing when the Act was passed, it seems obviously unsound, as both the majority (R. 187–189) and the minority (R. 194) of the Court of

[5] If the employees at one end of a shop or yard (assuming a carrier with only one shop or yard) unanimously favored a particular labor organization, and those at the other end another union, it certainly could not be contended that there was no dispute as to the representation of the shopmen or yardmen, or that all the men at both ends of the shop or yard were not "involved."

Appeals held. The words "craft or class" have no such connotation. The cases which petitioners cite for this proposition hold only that the prior agreements on the particular property are among the factors to be considered by the Board in determining the functional or occupational limits of the craft or class unit.[6] This has been the position of the Board itself since the issuance of its First Annual Report in 1935 (p. 20).[7]

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

ROBERT L. STERN,
Attorney.

MAY 1943.

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[6] *Brotherhood of Railway and Steamship Clerks* v. *Nashville C. & St. L. Ry. Co.*, 94 F. (2d) 97 (C. C. A. 6); *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, 88 F. (2d) 757 (App. D. C.); *Order of Railway Conductors* v. *National Mediation Board*, 113 F. (2d) 531 (App. D. C.).

[7] Because it thought the Act required otherwise (see p. 6, *supra*), the Board has not applied this principle to the geographical limitation upon the scope of a craft or class but only to the occupational limitation.

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